

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or an employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
6 which relief may be granted, or that seek monetary relief from a defendant who is
7 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the defendant is liable
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
21 specific factual allegations may be consistent with a constitutional claim, a court must
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
23 at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

1 If the Court determines that a pleading could be cured by the allegation of other
2 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
3 of the action. See *Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*).
4 Plaintiff's Complaint will be dismissed for failure to state a claim, but because it may
5 possibly be amended to state a claim, the Court will dismiss it with leave to amend.

6 **III. Complaint**

7 Plaintiff names Maricopa County Sheriff Joseph M. Arpaio and the Maricopa
8 County Sheriff's Office as Defendants in the Complaint.

9 Plaintiff raises three claims for relief. In Count One, Plaintiff claims the food he is
10 given contains less than 2000 calories, there is no drink with dinner, meat is really greasy,
11 portions are inadequate, fruit is dry or rotten, milk in the morning was taken away, and
12 food is always cold.

13 In Count Two, Plaintiff alleges there are four men in a cell, the buildings have
14 asbestos, there are not enough tables and chairs, there is not enough room to move
15 around, and there are only two toilets and two showers for 64 men.

16 In Count Three, Plaintiff alleges air conditioning is always under 68 degrees, that
17 he is not given extra blankets or clothes, there is improper ventilation, and "[they] won't
18 take you to medical when sick."

19 Plaintiff seeks money damages.

20 **IV. Failure to State a Claim**

21 **A. Defendants**

22 **1. Arpaio**

23 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
24 specific injury as a result of specific conduct of a defendant and show an affirmative link
25 between the injury and the conduct of that defendant. See *Rizzo v. Goode*, 423 U.S. 362,
26 371-72, 377 (1976). There is no *respondeat superior* liability under § 1983, and
27 therefore, a defendant's position as the supervisor of persons who allegedly violated
28 Plaintiff's constitutional rights does not impose liability. *Monell v. New York City Dep't*

1 of *Soc. Servs.*, 436 U.S. 658, 691-92 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067
2 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious
3 liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each
4 Government-official defendant, through the official’s own individual actions, has
5 violated the Constitution.” *Iqbal*, 556 U.S. at 676.

6 Plaintiff has not alleged that Defendant Arpaio personally participated in a
7 deprivation of Plaintiff’s constitutional rights, was aware of a deprivation and failed to
8 act, or formed policies that resulted in Plaintiff’s injuries. Accordingly, Plaintiff has
9 failed to state a claim against Defendant Arpaio.

10 **2. Maricopa County Sheriff’s Office**

11 The Maricopa County Sheriff’s Office is not a proper defendant. In Arizona, the
12 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.
13 *See* Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A sheriff’s office is
14 simply an administrative creation of the county sheriff to allow him to carry out his
15 statutory duties and not a “person” amenable to suit pursuant to § 1983. Accordingly, the
16 Maricopa County Sheriff’s Office will be dismissed from this action.

17 **B. Failure to Allege a Constitutional Violation**

18 Section 1983 provides a cause of action against persons acting under color of state
19 law who have violated rights guaranteed by the United States Constitution and federal
20 law. 42 U.S.C. § 1983; *see also Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir.
21 1995). Plaintiff has failed to allege any constitutional or federal-law violations.

22 A pretrial detainee’s claim for unconstitutional conditions of confinement arises
23 from the Fourteenth Amendment Due Process Clause rather than from the Eighth
24 Amendment prohibition against cruel and unusual punishment. *Bell v. Wolfish*, 441 U.S.
25 520, 535 and n.16 (1979). Nevertheless, the same standards are applied, requiring proof
26 that the defendant acted with deliberate indifference. *See Frost v. Agnos*, 152 F.3d 1124,
27 1128 (9th Cir. 1998).

1 Deliberate indifference is a higher standard than negligence or lack of ordinary
2 due care for the prisoner's safety. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). To
3 state a claim of deliberate indifference, plaintiffs must meet a two-part test. "First, the
4 alleged constitutional deprivation must be, objectively, sufficiently serious"; and the
5 "official's act or omission must result in the denial of the minimal civilized measure of
6 life's necessities." *Id.* at 834 (internal quotations omitted). Second, the prison official
7 must have a "sufficiently culpable state of mind," i.e., he must act with "deliberate
8 indifference to inmate health or safety." *Id.* (internal quotations omitted). In defining
9 "deliberate indifference" in this context, the Supreme Court has imposed a subjective
10 test: "the official must both be aware of facts from which the inference could be drawn
11 that a substantial risk of serious harm exists, *and* he must also draw the inference." *Id.* at
12 837 (emphasis added).

13 Even if Plaintiff had named proper Defendants, the Court would be unable to
14 construe his claims as raised pursuant to the Fourteenth Amendment because he has
15 failed to allege facts showing that a specific, individually named Defendant was aware of
16 a serious risk of harm to Plaintiff and failed to act. Accordingly, Plaintiff has failed to
17 state a claim in any of his three grounds for relief.

18 **V. Leave to Amend**

19 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to
20 state a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a
21 first amended complaint to cure the deficiencies outlined above. The Clerk of Court will
22 mail Plaintiff a court-approved form to use for filing a first amended complaint. If
23 Plaintiff fails to use the court-approved form, the Court may strike the amended
24 complaint and dismiss this action without further notice to Plaintiff.

25 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
26 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
27 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
28 do; (4) how the action or inaction of that Defendant is connected to the violation of

1 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
2 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

3 Plaintiff must repeat this process for each person he names as a Defendant. If
4 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
5 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
6 failure to state a claim. **Conclusory allegations that a Defendant or group of**
7 **Defendants has violated a constitutional right are not acceptable and will be**
8 **dismissed.**

9 Plaintiff must clearly designate on the face of the document that it is the "First
10 Amended Complaint." The first amended complaint must be retyped or rewritten in its
11 entirety on the court-approved form and may not incorporate any part of the original
12 Complaint by reference. Plaintiff may include only one claim per count.

13 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
14 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
15 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
16 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
17 in the original complaint and that was voluntarily dismissed or was dismissed without
18 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
19 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

20 **VI. Warnings**

21 **A. Release**

22 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his
23 release. Also, within 30 days of his release, he must either (1) notify the Court that he
24 intends to pay the balance or (2) show good cause, in writing, why he cannot. Failure to
25 comply may result in dismissal of this action.

26 **B. Address Changes**

27 Plaintiff must file and serve a notice of a change of address in accordance with
28 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion

1 for other relief with a notice of change of address. Failure to comply may result in
2 dismissal of this action.

3 **C. Copies**

4 Plaintiff must submit an additional copy of every filing for use by the Court. *See*
5 LRCiv 5.4. Failure to comply may result in the filing being stricken without further
6 notice to Plaintiff.

7 **D. Possible “Strike”**

8 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff
9 fails to file an amended complaint correcting the deficiencies identified in this Order, the
10 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
11 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
12 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more
13 prior occasions, while incarcerated or detained in any facility, brought an action or appeal
14 in a court of the United States that was dismissed on the grounds that it is frivolous,
15 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner
16 is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

17 **E. Possible Dismissal**

18 If Plaintiff fails to timely comply with every provision of this Order, including
19 these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963
20 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any
21 order of the Court).

22 **IT IS ORDERED:**

23 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

24 (2) As required by the accompanying Order to the appropriate government
25 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing
26 fee of \$10.00.

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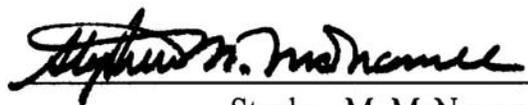
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(3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has **30 days** from the date this Order is filed to file a first amended complaint in compliance with this Order.

(4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

(5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil rights complaint by a prisoner.

DATED this 16th day of June, 2014.



Stephen M. McNamee
Senior United States District Judge